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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,023	12/08/2005	Sun-Uk Kim	76303-003US1	1005
69713 7590 02/25/2010 OCCHIUTI ROHLICEK & TSAO, LLP 10 FAWCETT STREET CAMBRIDGE, MA 02138				
EXAMINER				
SNELTING, ERIN LYNN				
ART UNIT		PAPER NUMBER		
1791				
NOTIFICATION DATE		DELIVERY MODE		
02/25/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

INFO@ORTPATENT.COM

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/560,023

Applicant(s)

KIM ET AL.

Examiner

Erin Snelling

Art Unit

1791

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1, 2, 4, 6, 7 and 9.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Steven P. Griffin/
Supervisory Patent Examiner, Art Unit 1791

Continuation of 3. NOTE: The deletion of "up to 700 C" from claim 6 raises new issues requiring further search and consideration. The amendment to claim 9 further reciting that the silica gel is subjected "to the first heat treatment at 700°C and to the second heat treatment" raises new issues requiring further search and consideration.

Continuation of 11. does NOT place the application in condition for allowance because:

In response to applicant's argument that a skilled artisan would not have been motivated to modify the Kang method by using the rotary tube furnace of Duraiswami because Kang teaches optimizing heating conditions to obtain silica balls having a low density, and Duraiswami indicates that the density of spheres increased when a rotary tube furnace, instead of a stationary one, was used:

Kang teaches obtaining silica balls having a density of 0.05-1.5 g/cc. Duraiswami teaches obtaining spheres having a density of 1.35 g/cc, which is within the range desired by Kang. Duraiswami also teaches that rotary tube furnace processing affects other physical properties than porosity of the spheres. Thus, a skilled artisan would have been motivated to modify the method of Kang with the rotary tube furnace processing of Duraiswami for the benefit of optimizing physical properties of the resulting spheres, as described in the previous Office action, and further would have had a reasonable expectation of success to maintain low densities as taught by Kang.

In response to applicant's argument that Kang and Dobson do not suggest using a rotary tube furnace and Duraiswami does not provide motivation to modify the Kang method by using a rotary tube furnace:

See comments above regarding Kang and Duraiswami. Examiner maintains the combination as described in the previous Office action.